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In the Supreme Court of the United States.

OCTOBER TERM, 1928

No. 364.

SEVERINO ALBERTO,
Petitioner,

v.

BONIFACIO NICOLAS,
Respondent.

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

It is requested that petitioner's brief in support of his petition for certiorari in this case stand as his brief on the hearing of the writ. Respondent has so treated it in his brief. Accordingly, this is filed as a reply brief for petitioner.

I.

RESPONDENT MISAPPREHENDS THE RELATION OF THE TERRITORIAL GOVERNMENT AND ITS LEGISLATIVE ENACTMENTS TO THE GOVERNMENT OF THE UNITED STATES.

1. Respondent's entire brief proceeds upon the mistaken assumption that this court has no jurisdiction to review the construction placed upon a local Philippine statute by the Philippine Supreme Court; but that, as counsel say (Respondent's brief, pp. 4–5):

"Reasoning by analogy, it may be said that where a *federal* question is connected with some matter pertaining to *local* law, this Honorable Court will decide only the federal question involved and nothing more, taking the decision of the Philippine Supreme Court on the local law as conclusive and as a matter adjudicated by another jurisdiction. * * * and that, moreover, to question and to reverse the interpretation given by the Philippine Supreme Court to the local law would be outside the scope of the jurisdiction of this Honorable Court."

2. In making this assumption, respondent's counsel overlook the difference between a territory, and a sovereign State of the Union. They assume that the same conclusiveness is to be attributed to the territorial court's construction of a local territorial statute, which this court has so frequently held is to be attributed to the decisions of a State supreme court construing its own local constitution or statutes; that is to say, that, as respondent's counsel phrase it (respondent's brief, p. 5):

"The construction given to the statute of a State by the highest judicial tribunal of such State is regarded as a part of the statute, and is as binding as is the text upon the courts of the United States." (Citing some of the many decisions of this court to that effect.)

3. Counsel overlook the patent fact that the Government of the Philippine Islands is not the government of a sovereign State of the Union. On the contrary, it is the government of a territory of the United States. In the last analysis, the entire territorial government,—executive, legislative and judicial branches, all alike included,—constitutes but an agency of the Congress to aid the Congress in exercising its constitutional "Power to * * * make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" (Const., Art. IV, Sec. 3, Cl. 2), and to aid the United States in governing the territory.

That the territorial legislature is but an agency of the Congress is settled by the decisions of this court. *United States* v. *Heinszen & Co.*, 206 U. S. 370, 384–386; *Rafferty* v. *Smith, Bell & Co.*, 257 U. S. 226, 232; *Hamik* v. *Alaska Fisheries Corp.*, 263 U. S. 510, 514.

4. It necessarily follows that, under Section 2 of the Third Article of the Constitution, "The judicial Power of the United States", vested in this court by the first section of that Article, extends without qualification to the review of all of the decisions of the territorial supreme court, in all cases in law and equity pending before this court. "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, * * * * *or which shall be made, under their Authority.*"

All of the laws enacted by the Philippine Legislature are made "under" the "authority" of "the Laws of the United States". They are made solely by authority of the laws of Congress, under which the Philippine Legislature, and the entire Philippine Government, exist, and from which they derive all their authority.

5. It is true that, as respondent's counsel themselves correctly say (Respondent's brief, p. 5), this court,

> "in a long line of decisions has enunciated that it will not be disposed to disturb the judgment of the Philippine Supreme Court construing local laws and enunciating a rule applicable in the Islands."
>
> *Gauzon* v. *Compañia General de Tabacos de Filipinas*, 245 U. S. 86, 89.

In so doing, this court has but applied to the judgments of the Supreme Court of the Philippine Islands the same rule which it had theretofore for many years applied to the judgments of the courts of last resort of the territories organized within the continental limits of the United States.

6. But, to say that it is "not disposed to disturb" such judgments, is a very different thing from saying it has no jurisdiction to do so. *The jurisdiction is beyond question.*

7. This court has frequently stated the rule as being that the territorial supreme court's interpretation of a local territorial statute will not be disturbed, unless "clearly erroneous". But that, if "clearly erroneous", it will be set aside.

> "While this construction, given by the Supreme Court of a Territory, *is not obligatory upon this court*, it is certainly entitled to respectful consideration, and in a doubtful case might well be accepted as turning the scale

in favor of the doctrine there announced." (*Italics ours;* Dakota Territory.)

Northern Pacific R. R. v. *Hambly*, 154 U. S. 349, 361.

"It is true that this ruling of the Supreme Court of the Territory does not, even in a question of practice arising under their local law, preclude this court from reviewing it, as would a decision of a state court in similar circumstances; but unless a manifest error be disclosed, we should not feel disposed to disturb a decision of the Supreme Court of a Territory construing a local statute." (Utah Territory.)

Fox v. *Haarstick*, 156 U. S. 674, 679.

To the same effect are:

Alzua v. *Johnson*, 231 U. S. 106, 110.
Ibanez v. *Hong Kong, etc., B'k'g Corp.*, 246 U. S. 621, 627.
Flemister v. *United States*, 207 U. S. 362, 375.
Doudell v. *United States*, 221 U. S. 325, 327–329.

8. In the present case, the territorial supreme court's interpretation of the statute in question is "clearly erroneous", as is pointed out in the petition for certiorari and supporting brief.

And, besides, that interpretation, if sustained, would make the statute trespass upon the executive power reserved by the Organic Act of the Congress to the Governor General and the executive departments under his supervision and control.

II

On the merits, it is submitted that, for the reasons set out in the petition for certiorari and supporting brief, the judgment of the Philippine Court in this case was clearly wrong, and should be reversed.

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